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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 DOROTHEY HEIMBACH,

11 Plaintiff,

12 vs.

13 STANISLAUS COUNTY, JUSTIN
14 CAMARA, and ZA XIONG,

15 Defendants.

16 2:23-cv-01887-DJC-CSK

17 *Assigned to:*
District Judge Daniel J. Calabretta

18 **PLAINTIFF'S MOTION IN LIMINE
#1 TO EXCLUDE CERTAIN
OPINIONS OF ROBERT BUX
UNDER DAUBERT**

19 FPTC Date: December 18, 2025
Time: 1:30 PM
Location: Courtroom 7

20 PLEASE TAKE NOTICE that on December 18, 2025, in Courtroom 7 of the
21 United States District Court for the Eastern District of California, at 501 I Street,
22 Sacramento, CA 95814, Plaintiff, DOROTHEY HEIMBACH, hereby moves in
23 limine for an order excluding, at the trial of the above-referenced matter:

24 1) Any testimony or opinions from Dr. Bux regarding Anthony Silva's pain
25 and suffering;

26 2) Any testimony or opinions from Dr. Bux regarding the standard of care
27 for nurses and doctors or that their negligence caused Mr. Silva's death;
28 and

1 3) Any testimony or opinions from Dr. Bux that Anthony Silva caused or
2 contributed to his own death by refusing to comply with medical
3 directives.

4 This Motion is based on this Notice of Motion, the attached Memorandum of
5 Points and Authorities, the records and files of this Court, and upon such other oral
6 and documentary evidence as may be presented at the time of the hearing.

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9 Dated: December 11, 2025

LAW OFFICES OF DALE K. GALIPO

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11 By: /s/ Cooper Alison-Mayne
12 Dale K. Galipo
13 Cooper Alison-Mayne
14 *Attorneys for Plaintiff Dorothy Heimbach*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs respectfully move this Court to exclude certain opinions of
4 Defendant's retained expert, Dr. Robert C. Bux. Many of Dr. Bux's proffered
5 opinions fail to meet the standards of Federal Rule of Evidence 702 and *Daubert v.*
6 *Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and should therefore be
7 excluded. Specifically, this motion seeks to exclude Dr. Bux's opinions regarding:
8 (1) Anthony Silva's pain and suffering; (2) the standard of care for nurses and
9 doctors, or that their negligent conduct caused Mr. Silva's death; and (3) the claim
10 that Mr. Silva caused his own death through noncompliance with medical
11 directives.

12 **II. LEGAL STANDARD**

13 Federal Rule of Evidence 702 permits expert testimony only when the
14 proponent demonstrates to the Court by a preponderance of evidence that: (1) the
15 expert's scientific, technical, or other specialized knowledge will help the trier of
16 fact to understand the evidence or to determine a fact in issue; (2) the testimony is
17 based on sufficient facts or data; (3) the testimony is the product of reliable
18 principles and methods; and (4) the expert has reliably applied the principles and
19 methods to the facts of the case. Fed. R. Evid. 702.

20 Under *Daubert*, the trial court serves as a gatekeeper to ensure that expert
21 testimony is both reliable and relevant. *Daubert*, 509 U.S. at 589. The proponent of
22 the expert testimony bears the burden of establishing admissibility by a
23 preponderance of the evidence. *Lust v. Merrell Dow Pharms., Inc.*, 89 F.3d 594,
24 598 (9th Cir. 1996). An expert's opinion must be based on "more than subjective
25 belief or unsupported speculation." *Daubert*, 509 U.S. at 590.

1 **III. ARGUMENT**

2 **A. Dr. Bux Should Not Be Permitted to Opine About Pain and**

3 **Suffering**

4 Dr. Bux admitted in his deposition that he does not intend to offer any

5 opinions regarding Mr. Silva's pain and discomfort. When asked directly whether

6 he planned to give opinions on this subject, he responded unequivocally:

7 Q. Are you planning on giving any opinions as to his

8 pain and discomfort during all of these

9 complications that he was having?

10 A. No.

11 Bux Depo. 30:23–31:1 (See “Exhibit A” to the Declaration of Cooper Alison-

12 Mayne in Support of Plaintiff’s Motion in Limine No. 1, herein after “Mayne

13 Decl.”) portions of the Deposition Transcript of Robert Charles Bux, MD) Because

14 Dr. Bux has disclaimed any intent to offer such opinions, any testimony on pain

15 and suffering should be precluded.

16 **B. Dr. Bux Should Not Be Permitted to Opine About Standard of**

17 **Care for Nurses, Doctors, or the Hospital**

18 Dr. Bux is a board-certified anatomical and forensic pathologist. Bux Depo.

19 8:18–20 (Exhibit A to Mayne Decl). He is not qualified to testify regarding the

20 standard of care for nurses, physicians, or hospitals—particularly in the context of

21 rehabilitative care for a quadriplegic patient.

22 When asked whether a patient with Mr. Silva's type of injury generally

23 needs lifetime care, Dr. Bux candidly admitted he lacks the relevant expertise:

24 Q. Does someone with that type of injury generally need

25 lifetime care?

26 MR. WHITEFLEET: Objection. It's outside the scope.

27 THE WITNESS: Yeah, I don't—I don't have a practice

28 taking care of those kind of injuries. I never did when I

1 was in practice in the Army and I never did in terms of—
2 of when I interned, so I—it's out of my scope of
3 understanding and knowledge.

4 Bux Depo. 8:8–16 (Exhibit A to Mayne Decl"). Similarly, when asked about what
5 activities he expected a quadriplegic patient to perform, Dr. Bux acknowledged his
6 lack of qualifications: "Well, I'm not—I'm not an occupational therapist." Bux
7 Depo. 62:4–7 (Exhibit A to Mayne Decl).

8 Dr. Bux further confirmed he would not opine on whether Mr. Silva's
9 medical treatment was reasonable or necessary:

10 Q. Okay. Are you going to give any opinions as to
11 whether any of the treatment was not reasonable or
12 necessary?

13 A. No.

14 Bux Depo. 16:19–22 (Exhibit A to Mayne Decl).

15 The Ninth Circuit has squarely addressed this issue. In *Trujillo v. County of*
16 *Los Angeles*, 751 F. App'x 968 (9th Cir. 2018), the court found the district court
17 abused its discretion by allowing two doctors to testify about the standard of care
18 of a nurse and nurse practitioner. *Id.* at 972. The court held that doctors generally
19 are not permitted to testify about the standard of care for nurses "absent some
20 special certification, expertise, or relevant knowledge." *Id.*

21 The *Trujillo* court cited *Lattimore v. Dickey*, 239 Cal. App. 4th 959 (2015),
22 for the proposition that "where a medical specialist is alleged to have acted
23 negligently, the 'specialist must possess and use the learning, care and skill
24 normally possessed and exercised by practitioners of that specialty under the same
25 or similar circumstances.'" *Id.* (citation omitted).

26 As a forensic pathologist, Dr. Bux lacks the specialized expertise to opine on
27 the standard of care for nurses or treating physicians in providing rehabilitative

1 care to a quadriplegic patient. His own testimony confirms as much. Any opinions
2 on these topics should be excluded.

3 **C. Dr. Bux's Opinion That Mr. Silva Caused His Own Death by**
4 **Refusing to Comply with Medical Directives Is Outside of his**
5 **Expertise and Speculative**

6 Dr. Bux's opinion that Mr. Silva's alleged noncompliance contributed to his
7 death is pure speculation unsupported by the evidence. Dr. Bux himself admitted
8 that the medical records do not provide a clear picture of what Mr. Silva's alleged
9 noncompliance actually entailed:

10 Q. And I noticed in your review there's multiple times
11 you noted he was compliant and other times non-
12 compliant. Would that be fair?

13 A. Right. But it's not clear to me—it's not clear to me
14 exactly what that included. You know, if you want to get
15 the best view, you need to talk to one of the doctors that
16 took care of him over that—over that time period when
17 he was in Central Valley Specialty Hospital, because the
18 notes are not real good about that.

19 Bux Depo. 28:17–29:2 (Exhibit A to Mayne Decl).

20 When asked about Mr. Silva's ability to prevent his own pressure ulcers
21 given his quadriplegia, Dr. Bux acknowledged that the nursing staff bore
22 responsibility for repositioning him:

23 THE WITNESS: He could move somewhat. And how
24 much of that would have been enough, should have been
25 able to prevent ulcers that were on his arms, on his
26 shoulders, on his upper back. How far down he would be
27 able to do that, I don't know. That's what the nurses are
28 there for, and needed to do, and I don't think it—it didn't

1 happen or he wouldn't have had the—the depth and size
2 of the decubitus ulcers in this short—relative short period
3 of time in which they developed.

4 Q. Right. But I guess what I'm getting at is, given his
5 condition, would you agree that he was reliant on the
6 nursing staff to move him?

7 THE WITNESS: Yeah, he was reliant on the nursing
8 staff to do his nursing care, and in terms of moving him
9 every two hours, they failed.

10 Bux Depo. 26:3–27:20 (Exhibit A to Mayne Decl).

11 Notably, Defendants' own expert, Robert Shavelle, considered whether
12 "non-compliant" behavior was a relevant factor in adjusting Mr. Silva's life-
13 expectancy calculation and determined that no adjustment was necessary. (*See*
14 "Exhibit C" to Mayne Decl, portions of Dr. Robert Shavelle, Rule 26 Report) This
15 is further indication that Dr. Bux is speculating when he opines that Mr. Silva's
16 alleged noncompliance caused his death. Without a foundation in the record
17 establishing what specific conduct constituted "noncompliance," how frequently it
18 occurred, and how it causally contributed to Mr. Silva's death, Dr. Bux's opinion
19 amounts to nothing more than "subjective belief or unsupported speculation" that
20 *Daubert* forbids. 509 U.S. at 590.

21 Additionally, Dr. Bux's opinion regarding Mr. Silva's alleged noncompliance
22 is irrelevant to the issues before the jury because it fails to consider Mr. Silva's
23 capacity to comply with medical directives given his physical and mental
24 limitations.

25 California law is clear that an injured person's duty to mitigate damages
26 must be evaluated from the perspective of a reasonable person in his situation—not
27 an able-bodied, mentally healthy individual. "The correct rule is that an injured
28 person must use reasonable diligence in caring for his injuries. What is reasonable

1 diligence depends upon all the facts and circumstances of each case." *Christiansen*
2 *v. Hollings*, 44 Cal. App. 2d 332, 346 (1941).

3 Dr. Bux's opinions fail to account for several critical factors affecting Mr.
4 Silva's ability to comply.

5 *Physical Limitations.* Mr. Silva was a quadriplegic, paralyzed from C6-C7
6 down. Dr. Bux admitted that Mr. Silva "was reliant on the nursing staff to do his
7 nursing care, and in terms of moving him every two hours, they failed." Bux Depo.
8 27:18–20(Exhibit A to Mayne Decl). When asked what activities he expected a
9 quadriplegic to perform, Dr. Bux acknowledged: "Well, I'm not—I'm not an
10 occupational therapist." Bux Depo. 62:4–7 (Exhibit A to Mayne Decl). By his own
11 admission, Dr. Bux lacks both the expertise and the specific facts necessary to
12 opine on what was functionally possible for someone in Mr. Silva's condition. His
13 testimony therefore amounts to speculation about what he imagines Mr. Silva
14 should have done, untethered from the actual circumstances Mr. Silva faced. Such
15 speculation is irrelevant to the question before the jury, which requires an
16 individualized analysis of what was reasonable for this individual.

17 *Mental State.* Dr. Bux failed to consider Mr. Silva's mental state and how
18 that affected his ability to comply with medical directives. When asked whether
19 someone who becomes quadriplegic may experience depression, Dr. Bux
20 responded: "I think anybody can if it's—if it's right. I don't know whether he did or
21 he didn't." Bux Depo. 47:2–10 (Exhibit A to Mayne Decl). Depression and suicidal
22 ideation are well-documented consequences of spinal cord injury, as explained in
23 the defense's own expert's report. (*See Exhibit C to Mayne Decl.*) In considering
24 whether Mr. Silva's actions or inactions amounted to a failure to mitigate damages,
25 the inquiry must be based on Mr. Silva's perspective, including his mental state.

26 As a forensic pathologist, Dr. Bux lacks the expertise to testify regarding
27 what is functionally possible for a quadriplegic, how depression affects medical
28

1 compliance, or what constitutes "reasonable" self-care for someone in Mr. Silva's
2 circumstances.

3 For the reasons above, Dr. Bux's opinions...

4 **D. Dr. Bux's Testimony Is Misleading and Not Helpful to the Jury**

5 Dr. Bux's proffered testimony fails to meet Rule 702's requirement that
6 expert testimony "help the trier of fact." His testimony is misleading for two
7 reasons.

8 *First*, to the extent Dr. Bux opines about the negligence of the nurses,
9 doctors, and hospital in treating Mr. Silva, such testimony is irrelevant to the jury's
10 determination of damages. Under California law, as reflected in CACI No. 3929:

11 If you decide that [Defendants are] legally responsible
12 for [Plaintiff's] harm, [they are] also responsible for any
13 additional harm resulting from the acts of others in
14 providing medical treatment or other aid that [Plaintiff's]
15 injury reasonably required, even if those acts were
16 negligently performed.

17 Thus, even if the hospital or its staff negligently cared for Mr. Silva,
18 Defendants remain responsible for the resulting harm. Testimony about the
19 hospital's negligence is irrelevant to any issue the jury must decide and serves only
20 to confuse and mislead.

21 *Second*, Dr. Bux's testimony appears designed to shift blame for Mr. Silva's
22 death onto the victim himself. But as discussed above, Dr. Bux lacks foundation
23 for these opinions and lacks the expertise to evaluate what Mr. Silva could
24 reasonably have been expected to do given his condition. Further, his opinion fails
25 to take consideration of what would a reasonable person would do in the
26 circumstances faced by Mr. Silva, as he takes no account of his physical limitations
27 or possible mental limitations that both were directly relevant to what Mr. Silva
28 could do to mitigate his damages.

Mr. Bux's testimony on the challenged topics will not be helpful to a jury and will only serve to mislead and confuse the jury. Therefore, it should be excluded.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court exclude Dr. Bux's testimony regarding: (1) Mr. Silva's pain and suffering; (2) the standard of care for nurses and doctors, or that their negligent care caused Mr. Silva's death; and (3) any opinion that Mr. Silva caused or contributed to his own death through noncompliance with medical directives.

Dated: December 11, 2025

LAW OFFICES OF DALE K. GALIPO

By: /s/ Cooper Alison-Mayne
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